

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PATH AMERICA, LLC; PATH AMERICA
SNOCO LLC; PATH AMERICA FARMER'S
MARKET, LP; PATH AMERICA KINGCO
LLC; PATH AMERICA TOWER, LP; PATH
TOWER SEATTLE, LP; POTALA TOWER
SEATTLE, LLC; and LOBSANG DARGEY,

Defendants, and,

POTALA SHORELINE, LLC; POTALA
VILLAGE KIRKLAND, LLC; DARGEY
DEVELOPMENT, LLC; DARGEY
ENTERPRISES, LLC; and PATH OTHELLO,
LLC,

Relief Defendants.

Case No. 2:15-cv-01350-JLR

~~PROPOSED~~ ORDER GRANTING FINAL
APPROVAL OF DISPOSITION OF POTALA
TOWER RELATED ASSETS

NOTE ON MOTION CALENDAR: July 8, 2016

~~PROPOSED~~ ORDER GRANTING FINAL APPROVAL OF
DISPOSITION OF POTALA TOWER RELATED ASSETS

1047005.02/LA

Allen Matkins Leck Gamble Mallory & Natis LLP
515 S. Figueroa Street, 9th Floor
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[PROPOSED] ORDER

This matter came before the Court on the Motion for Final Approval of Disposition of Potala Tower Related Assets ("Motion"), filed by Michael A. Grassmueck (the "Receiver"), the Court-appointed receiver for Path America, LLC, et al. ("Receivership Entity" or "Receivership Entities"); pursuant to which the Receiver seeks final approval of the terms of a restructuring transaction ("Restructuring Transaction") for the commercial development project located at 2116 Fourth Avenue, Seattle, Washington ("Tower Project") submitted by Binjiang Tower Corp., PH Seattle Tower I, LLC ("Molasky"), and Lobsang Dargey and certain affiliated companies. Appearances are as set forth on the record. The Court, having considered the Receiver's Motion, all submissions filed in support of and in response thereto, and other pleadings filed in this action, and finding that good cause exists to grant the Receiver's Motion, hereby **ORDERS, ADJUDGES AND DECREES** as follows:

1. The Receiver's Motion is hereby GRANTED;

2. The final agreements memorializing the terms of the Restructuring Transaction ("Final Agreements"), submitted as Exhibit B to the Receiver's Declaration and as sealed exhibits to the Stipulated Motion filed in support of the Receiver's Motion, are hereby APPROVED;

3. Upon the closing of the transactions contemplated by the Final Agreements:

a. The complete redemption of membership interest in Potala Tower Seattle, LLC ("Tower LLC") currently held by Dargey Holdings LLC as specified in the Final Agreements is APPROVED, and the redeemed interests shall be delivered to Tower LLC free and clear of all security interests, liens, claims, pledges, encumbrances or other rights or claims of any other person or any preemptive or similar rights ("Encumbrances");

b. Molasky, or its designee, shall be issued 100% of the ownership interest in the Receivership Entity Path America KingCo LLC ("KingCo LLC"), free and clear of any Encumbrances; and

"If and to the extent the Receiver, Binjiang, Molasky, and the Dargey Parties agree in writing to revise the Notice to Investors (defined below) to narrow the scope of the release attached thereto as Exhibit E, such revised Disclosure Document is hereby APPROVED."

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF
DISPOSITION OF POTALA TOWER RELATED ASSETS

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1 c. The Receivership Entities Tower LLC, KingCo LLC, Path America Tower,
2 LP, and Path Tower Seattle, LP shall be free and clear of all liabilities other than those liabilities
3 and obligations they retain as specified in the Final Agreements.

4 4. The distribution of \$1.8 million to the trust account of counsel for Lobsang Dargey
5 and certain affiliated entities is deemed to be outside the scope of the Court's Order Granting
6 Motion for Preliminary Injunction (Dkt. 68) and outside the scope of the asset freeze. Such funds
7 shall be used solely to pay legal fees and related expenses.

8 5. The Court's Order Granting Motion for Preliminary Injunction (Dkt. 68) is hereby
9 modified to lift the freeze imposed thereby over monies in financial accounts to the extent
10 necessary to permit the payments from Path Othello, LLC contemplated by the Final Agreements.

11 6. Central Escrow, Inc., which currently holds funds in escrow on behalf of EB-5
12 investors of the Tower Project, is hereby ORDERED to promptly transfer all such funds in its
13 possession, custody or control to Tower LLC;

14 7. The form of notice to the Tower Project's EB-5 investors ("Notice to Investors"), a
15 copy of which is attached as Exhibit A to the Receiver's Declaration filed in support of his Motion,
16 is hereby APPROVED;

17 8. The methods and process for providing the Notice to Investors to the Tower
18 Project's EB-5 investors, as proposed and detailed in the Receiver's Motion and the Final
19 Agreements, is hereby APPROVED;

20 9. The following deadlines for the Receiver's delivery of, and EB-5 investors'
21 responses to the Notice to Investors, previously established by order of this Court, are hereby
22 REAFFIRMED:

23 a. The Receiver shall send the Notice to Investors by no later than July 25,
24 2016;

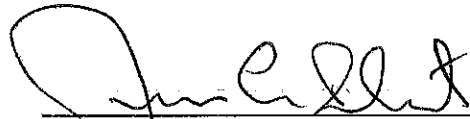
25 b. EB-5 investors shall deliver to the Receiver no later than August 24, 2016
26 their responses to the Notice to Investors; and
27
28

1 c. EB-5 investors who fail to deliver a response to the Receiver by August 24,
2 2016 shall be deemed to have opted-in to the Restructuring Transaction, and shall be bound by the
3 terms, conditions, and releases specified in the Receiver's Motion, the Final Agreements and the
4 Notice to Investors; and

5 10. The Receiver is further AUTHORIZED and EMPOWERED to take any and all
6 action to effectuate the terms and provisions of the Restructuring Transaction as described and
7 specified in the Motion, the Final Agreements, and this Order;

8 **IT IS SO ORDERED.**

9
10 Dated: July 15, 2016



Hon. James L. Robart
Judge, United States District Court